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June 8, 2006

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2006-3 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by ~~strikeout~~ and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Monday, July 10, 2006**. These may be sent by e-mail using the "Comments Form" on the Board's website (www.boe.ca.gov/proptaxes/cld.htm), fax or mail. Here is the mailing address:

Board of Equalization
Assessment Policy and Standards Division
ATTN: Annotation Coordinator
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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, they will be printed in Volume 3 of the Property Taxes Law Guide. At that time, the CLD becomes obsolete.

Copies of the backup correspondence are available by e-mail using the "Comments Form" on the Board's website (www.boe.ca.gov/proptaxes/cld.htm). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG/grs
Enclosure

PROPERTY AND SPECIAL TAXES DEPARTMENT

PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2006-3

June 8, 2006

220.0000 CHANGE IN OWNERSHIP

220.0372.010 Life Estate. Where a life estate created for the benefit of a child terminates as a result of the death of the child life tenant, the transfer to the surviving children is from the parent/transferor of the remainder interest, not from the life tenant. Since the parent is the transferor, the parent/child exclusion and/or the grandparent/grandchild exclusion may apply to exclude the re-transfer from change in ownership provided that all of the filing requirements are met. C 3/6/2006.

~~220.0400 Mineral Rights.~~ Where a sublease, etc., of mineral rights is for a specific term of years rather than for a period "for so long as deposits can be extracted in paying quantities", Revenue and Taxation Code section 61(c) and Property Tax rule 462(f) rather than section 61(a) are applicable, regardless of whether or not all deposits may be removed during the remaining lease term. C 3/31/82.

Annotation is no longer consistent with section 61(a) as amended by Stats. 1985, Ch. 186, effective January 1, 1986.

~~220.0401 Mineral Rights.~~ The transfer of a working interest in a mineral property is equivalent to a transfer of the fee interest in so far as mineral rights are concerned; however, the transfer of a royalty interest is not. Royalty interests are not subject to property tax.

~~If the working interest is granted for a term of years that is less than the period necessary to extract the reserves, a lease and not an interest equivalent to a fee is created. When a lease is created or transferred, the term, i.e., more or less than 35 years, determines whether or not a change in ownership has occurred. C 10/2/80.~~

Annotation is no longer consistent with section 61(a) as amended by Stats. 1985, Ch. 186, effective January 1, 1986.

~~220.0415 Mining Lease.~~ A mining lease for an initial term of ten (10) years and for the continuing term as long after the initial term as any mining, development, processing, or beneficiating is being conducted on a continuous basis is an agreement that constitutes a grant of a "determinable fee," is an interest in real property, and constitutes a change in ownership under Revenue and Taxation Code section 61(a). C 1/21/80.

Annotation is no longer consistent with section 61(a) as amended by Stats. 1985, Ch. 186, effective January 1, 1986.

~~220.0416 Mining Lease.~~ Upon the transfer of a lessee's interest in a mining lease, there is a change in ownership if the remaining term of the lease is 35 years or more but not if the remaining term is less than 35 years. Upon the transfer of a lessor's interest (reversion) in such a lease, there is a change in ownership if the remaining term of the lease is less than 35 years, but not if the remaining term is 35 years or more. C 5/4/84.

Annotation is no longer consistent with section 61(a) as amended by Stats. 1985, Ch. 186, effective January 1, 1986.

~~220.0417 **Mining Lease.** The lease of a mining right for a specific term of years is governed by the general lease provisions of Revenue and Taxation Code section 61(c) rather than section 61(a), which deals with the change in ownership of mineral rights that allow the transferee of the right to extract minerals for so long as they may be produced in paying quantities. C 7/23/85.~~

Annotation is no longer consistent with section 61(a) as amended by Stats. 1985, Ch. 186, effective January 1, 1986.

220.0526 **Partnership.** Upon the death of the majority partner, Trust A directed the successor trustee to distribute W's 62.5 percent interest in the partnership in equal shares to son and daughter (31.25 percent each). The transfer of W's majority interest in the partnership did not result in a change in ownership of the real property owned by the partnership because the transfer did not result in any individual or entity holding more than 50 percent of the partnership interests. C 1/17/2006.

~~220.0535 **Partnership Interests.** We have not advocated counting partnership interests transferred in connection with excluded Revenue and Taxation Code section 62(a)(2) transfers, because such transfers have been excluded by statute and by rule and there is no legislative intent to do so. However, an argument could be made that such partnership interests transferred should be counted, since there is no statute or rule which defines or limits the term "transferred" as it is used in Revenue and Taxation Code section 64(d). If the term is applied literally and given its broadest scope, then every transfer of any ownership interest in a legal entity, including every transfer of every partnership interest in a partnership, would be counted for purposes of section 64(d). C 8/23/95.~~

Annotation is inconsistent with Rule 462.180, subdivision (d)(2) which was amended in 1998 to specifically provide that proportional transfers excluded under section 62, subdivision (a)(2) are not cumulated or counted to determine a change in ownership.

220.0822 **Trusts—Sprinkle/Spray Provisions.** If a trust provides that the trustee may exercise a sprinkle power to a group of beneficiaries that includes some persons to whom exclusions are available and some to whom no exclusions are available, then it is treated as though no exclusions are available. If the trust does not specify a fixed interest for each beneficiary, all beneficiaries are presumed to have equal interests in the property. C 1/4/2006.

535.0000 LAND USE RESTRICTIONS

535.0005 City Ordinance or Contract—Affordable Housing. In assessing townhomes purchased at a discount by low to moderate income individuals, as defined in a city affordability schedule, and on which the city imposed resale controls designed to maintain the availability of affordable housing, the assessor should recognize these limitations as enforceable restrictions under Revenue and Taxation Code section 402.1 similar to those discussed in LTA 81/74. LTA 7/7/81 (No. 81/74); C 12/13/93; ~~C 11/28/95.~~

Letter dated November 28, 1995, is incorrect and inconsistent with the advice given in the first two references.

610.0000 NEWLY CONSTRUCTED PROPERTY

610.0086 Solar Energy System Exclusion. The construction of a carport that has active solar panels installed on its roof is not excluded from assessment under Revenue and Taxation Code section 73 unless the carport itself is part of the active solar energy system. A carport that merely serves as the mounting point for solar panels is not considered part of the active solar energy system. Thus, such a structure is subject to assessment as new construction. C 1/17/2006.

625.0000 PARENT-CHILD TRANSFERS

625.0039 Claims. Under Revenue and Taxation Code section 63.1, the statute of limitations for filing a claim for the parent-child exclusion commences on the date of the purchase or transfer of the real property. Accordingly, a claim for the parent-child exclusion is invalid where it is filed prior to the date of the purchase or transfer. C 12/13/2005.

625.0121 Life Estate. Where a life estate created for the benefit of a child terminates as a result of the death of the child life tenant, the transfer to the surviving children is from the parent/transferor of the remainder interest, not from the life tenant. Since the parent is the transferor, the parent/child exclusion and/or the grandparent/grandchild exclusion may apply to exclude the re-transfer from change in ownership provided that all of the filing requirements are met. C 3/6/2006.

625.0196 Step Transaction. The step transaction doctrine is applied when a series of transfers are made merely to avoid reappraisal. However, the step transaction doctrine does not apply to multiple transfers of real property and legal entity interests between parents and children consistent with the legislative intent, expressed in the uncodified note in the bill that enacted Revenue and Taxation Code section 63.1 (section 2 of Chapter 48, Statutes of 1987), that its provisions be liberally construed. C 12/8/2005.